UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER MURPHY, an individual, on behalf of himself and all others similarly situated, Plaintiff, v. SPRINT/UNITED MANAGEMENT COMPANY, a Kansas Corporation, Defendant.	No. 2:20-cv-00507-TLN-DB **ORDER**

This matter is before the Court on Defendant Sprint/United Management Company's ("Defendant") Motion to Dismiss or in the alternative Motion to Stay. (ECF No. 6.) Plaintiff filed an opposition. (ECF No. 11.) Defendant filed a reply. (ECF No. 13.) For the reasons set forth below, the Court hereby GRANTS in part and DENIES in part Defendant's motion. (ECF No. 6.)

///

///

///

///

///

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff alleges he worked for Defendant from August 2015 through January 2019 as a non-exempt, hourly-paid sales supervisor. (ECF No. 1 at 4.) Plaintiff states during his employment, Defendant required Plaintiff and putative class members to respond to work-related phone calls and text messages while outside of their scheduled shifts, including meal breaks. (*Id.*) Plaintiff further alleges his meal breaks were missed, shortened, or delayed past the fifth hour of work. (*Id.*) Plaintiff maintains he and other putative class members were not paid meal period premiums for each day of interrupted and delayed meal breaks. (*Id.* at 4–5.) Plaintiff alleges Defendant failed to pay its employees one hour of pay at the regular rate of compensation for each instance of missed rest and meal breaks. (*Id.* at 2.) Plaintiff alleges Defendant failed to pay straight time wages for off-the-clock work performed. (*Id.*) Plaintiff alleges Defendant failed to pay overtime wages for work performed in excess of eight hours a day/forty hours a week. (*Id.*) Plaintiff states Defendant failed to furnish timely and accurate wage statements. (*Id.*) Plaintiff alleges he and other putative class members had to work off the clock, before or after scheduled shifts. (*Id.* at 5.) Plaintiff alleges Defendant did not allow Plaintiff and other class members to incur overtime. (*Id.*) Plaintiff alleges if Defendant was allowed overtime, it was severely limited. (*Id.*) Plaintiff alleges Defendant did not advise Plaintiff and class members that they were entitled to breaks. (*Id.*) Plaintiff alleges the practice occurred systematically and was always done with the full knowledge and consent of Defendant. (*Id.* at 6.)

There are currently four other pending putative class action cases that include parties in the instant action (collectively "Class Actions"). (ECF No. 6-1 at 6.)

A. First and Second Cases: *Navarrete* Actions

i. Navarrete Class Action

On January 29, 2019, plaintiff Antonio Navarrete ("*Navarrete*") filed a wage and hour class action complaint against Defendant in the Superior Court of California, County of Orange. (ECF No. 6-1 at 8 (citing *Antonio Navarrete v. Sprint/United Mgmt. Co., et al.*, Case No. 8:19-cv-00794-JLS-ADS (C.D. Cal. Jan. 29, 2019), filed on January 29, 2019).) *Navarrete* asserted the following claims: (1) Failure to Pay Wages Including Overtime as Required by Labor Code §§

510 and 1194; (2) Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Order 7-2001; (3) Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512; (4) Failure to Pay Timely Wages Required by Labor Code § 203; (5) Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226; (6) Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802; and (7) Violation of Business & Professions Code § 17200, *et seq*. (*Id.*) The putative class in this action is "'[a]ll persons who have been employed by Defendants as non-exempt employees or equivalent positions, however titled, in the state of California within four (4) years from the filing of the Complaint in this action until its resolution.'" (*Id.*)

On April 30, 2019, Defendant removed the case to the United States District Court, Central District of California. (*Id.*) On December 10, 2019, the parties reached a tentative settlement agreement. (*Id.* at 8–9.) Parties to the tentative settlement agreement include "all current and former non-exempt employees of Defendant who worked in Defendant's retail stores from February 25, 2016 through April 8, 2020." (*Id.*)

ii. Navarrete PAGA Action

Navarrete also filed a related Private Attorneys General Act ("PAGA") action against Defendant and Sprint Corporation for the same alleged wage and hour violations asserted in the class action complaint. (*Id.* (citing *Antonio Navarrete v. Sprint/United Mgmt. Co. and Sprint Corp.*, Case No. 30-2019-01062047-CU-OE-CXC, (Cal. Sup. Ct., Apr. 5, 2019), filed on April 5, 2019).) The putative class in the PAGA action is "the general public and all non-exempt aggrieved employees." (ECF No. 6-1 at 8–9.) The PAGA action is not at issue in the instant action. (*See* ECF No. 6-1 at 8–9; *see also* ECF No. 11 at 9.)

B. Third Case: *Amaraut* Action

On February 28, 2019, plaintiff Vladimir Amaraut ("*Amaraut*") filed a wage and hour class and collective action against Defendant. (ECF No. 6-1 at 9 (*Vladimir Amaraut v. Sprint/United Mgmt. Co.*, Case No. 3:19-cv-0411-WQH-AHG (S.D. Cal. Feb. 28, 2019), filed on February 28, 2019).) *Amaraut* asserted the following actions: (1) Violation of the Fair Labor Standards Act (the "FLSA"); (2) Failure to Compensate for All Hours Worked; (3) Failure to Pay

Minimum Wage; (4) Failure to Pay Overtime Wages; (5) Failure to Authorize, Permit, and/or Make Available Meal and Rest Periods; (6) Waiting Time Penalties Pursuant to Labor Code §§ 201-203; (7) Violations of Labor Code § 226 – Itemized Wage Statements; (8) Violation of California Business and Professions Code § 17200, *et seq.*; and (9) Penalties Pursuant to PAGA, Labor Code § 2699 *et seq.*. (*Id.*) *Amaraut's* putative class includes "[a]ll current and former non-exempt employees of [Sprint] working in [Sprint's] retail establishments throughout the State of California," as well as employees in the states of Colorado, New York, Arizona, Ohio, and Washington. (*Id.*) On November 4, 2019, the United States District Court, Southern District of California granted a joint motion to conditionally certify the collective and facilitate notice. (*Id.* at 10.)

C. Fourth Case: *Fuhr* Action

On December 17, 2019, Josh Fuhr ("*Fuhr*") filed a wage and hour class action in the United States District Court, Southern District of California — the same district as the ongoing *Amaraut* action. (ECF No. 6-1 at 10 (citing *Josh Fuhr, et al. v. Sprint/United Mgmt. Co.*, Case No. 3-19-cv-02418-LAB-WVG (S.D. Cal. Mar. 12, 2020), filed on March 12, 2020).) *Fuhr* alleges a class action against Defendant for alleged wage and hour violations including: (1) Violation of the Fair Labor Standards Act, pursuant to 29 U.S.C. §§ 207, 211(C), 216(B), 255(a) and 29 C.F.R. § 516 *et seq.*; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Pay Minimum/Regular/Owed Wages; (5) Failure to Pay Overtime Wages; (6) Failure to Reimburse Necessary Business Expenses; (7) Failure to Furnish Accurate Wage Statements; (8) Failure to Pay All Wages Upon Termination; and (9) Violation of California Business and Professions Code § 17200, *et seq.*. (*Id.*) The putative class includes "[a]ll current and former non-exempt, hourly-paid store managers (level "C") employed by [Sprint] in California during the Class Period[]." (*Id.*)

D. The Instant Action

On March 5, 2020, Plaintiff filed the instant action in this Court. (ECF No. 1.) On June 23, 2020, Defendant filed a motion to dismiss. (ECF No. 6.) On July 6, 2020, Plaintiff filed a joint statement with the Court, designating the case as a class and PAGA representative action.

(ECF No. 10.)

II. STANDARD OF LAW

A motion to dismiss for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure ("Rule") 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Rule 8(a) requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). Under notice pleading in federal court, the complaint must "give the defendant fair notice of what the claim . . . is and the grounds upon which it rests." *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations omitted). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

On a motion to dismiss, the factual allegations of the complaint must be accepted as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court is bound to give the plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. *Retail Clerks Int'l Ass'n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege "'specific facts' beyond those necessary to state his claim and the grounds showing entitlement to relief." *Twombly*, 550 U.S. at 570.

Nevertheless, a court "need not assume the truth of legal conclusions cast in the form of factual allegations." *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not require detailed factual allegations, "it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). Moreover, it is inappropriate to assume the plaintiff "can prove facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not been alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459

U.S. 519, 526 (1983).

Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 697 (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 680. While the plausibility requirement is not akin to a probability requirement, it demands more than "a sheer possibility that a defendant has acted unlawfully." *Id.* at 678. This plausibility inquiry is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

In ruling on a motion to dismiss, a court may only consider the complaint, any exhibits thereto, and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

If a complaint fails to state a plausible claim, "'[a] district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.'" *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)).

III. ANALYSIS

Plaintiff alleges eight claims: (1) Failure to Provide Meal Periods (violation of Cal. Lab. Code §§ 512, 226.7, and the applicable wage order); (2) Failure to Provide Rest Periods (violation of Cal. Lab. Code § 226.7 and the applicable wage order); (3) Failure to pay Minimum/Regular Wages (violation of Cal. Lab. Code §§ 1194, 1194.2, 1197, 1198, and the applicable wage order); (4) Failure to Pay Overtime Wages (violation of Cal. Lab. Code § 510, 1194, 1198, and the applicable wage order); (5) Failure to Furnish Timely and Accurate Wage Statements (violation of Cal. Lab. Code § 226); (6) Failure to Pay all Wages due upon Termination (violation of Cal. Lab. Code §§ 201-203; (7) violation of California's Unfair Competition Law (Bus. & Prof. Code § 17200 *et. seq.*); and (8) violation of Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2698 and 2699, *et. seq.*). (ECF No. 1 at 12–23.)

Defendant argues the Court should dismiss all claims under a "first-to-file rule" because there are four other "putative class, collective, and/or representative action[s] pending against Defendant." (ECF No. 6 at 6.) Defendant argues the other cases involve "the same defendant, overlapping claims, theories of liability, and substantially similar putative classes, collectives, and/or 'aggrieved employees'" in relation to the instant action. (*Id.*) Alternatively, Defendant argues the Court should stay the instant action pending resolution of the other pending Class Actions. (*Id.* at 20.) The Court will first address Defendant's request for judicial notice, second address the first-to-file rule and its applicability to the instant action, and third whether to stay the action.

A. Request for Judicial Notice

Defendant requests the Court take judicial notice of Exhibits A–J.[1] (*See* ECF No. 6-3.) Defendant asserts exhibits are filed within either: (1) the United States District Court, Southern District of California; (2) the United States District Court, Central District of California; or (3) the

[1] Exhibit A is the *Antonio Navarrete v. Sprint/United Mgmt. Co. and Sprint Corp.* ("*Navarrete* Class") Class Action Complaint filed in the Superior Court of California, County of Orange on January 29, 2019. (ECF No. 6-3 at 5–26.) Exhibit B is the Notice of Removal filed on April 30, 2019, transferring the *Navarrete* Class Action Complaint from the Superior Court of California, County of Orange, to the United States District Court, Central District of California. (ECF No. 6-3 at 27–44.) Exhibit C is the *Antonio Navarrete v. Sprint/United Mgmt. Co. and Sprint Corp.* ("Navarrete PAGA") PAGA Representative Action Complaint filed in the Superior Court of California, County of Orange on April 5, 2019. (ECF No. 6-3 at 45–79.) Exhibit D is the *Vladimir Amaraut v. Sprint/United Mgmt. Co.* ("*Amaraut* Class") Collective and Class Action Complaint filed in the United States District Court, Southern District of California, on February 28, 2019. (ECF No 6-3 at 80–117.) Exhibit E is the *Amaraut* Class First Amended Collective and Class Action Complaint filed in the United States District Court, Southern District of California, on October 30, 2019. (ECF No. 6-3 at 118–175.) Exhibit F is the *Amaraut* Class Joint Motion to Conditionally Certify the Collective and Facilitate Notice, filed in the United States District Court, Southern District of California, on November 1, 2019. (ECF No. 6-3 at 176–189.) Exhibit G is the United States District Court, Southern District of California's November 4, 2019 Order Granting the *Amaraut* Class Parties' Joint Motion to Conditionally Certify the Collective and Facilitate Notice. (ECF No. 6-3 at 190–96.) Exhibit H is the *Navarrete* Class Notice of Settlement filed in the United States District Court, Southern District of California, on December 12, 2019. (ECF No. 6-3 at 197–99.) Exhibit I is the *Josh Fuhr v. Sprint/United Mgmt. Co.* ("*Fuhr* Class") Class Action Complaint filed in the United States District Court, Southern District of California, on December 17, 2019. (ECF No. 6-3 at 200–21.) Finally, Exhibit J is the Fuhr Class First Amended Complaint filed in the United States District Court, Southern District of California, on March 12, 2020. (ECF No. 6-3 at 222–49.)

Superior Court of California, County of Orange. (ECF No. 6-3 at 2–3.) Defendant asks the Court to take judicial notice of the documents to demonstrate that the *Navarrete*, *Amaraut*, and *Fuhr* actions were filed before Plaintiff's action. (ECF No. 6-3 at 4.) Plaintiff does not oppose Defendant's request. (*See generally* ECF No. 11.)

The Court may take judicial notice of facts that can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Courts have taken judicial notice of public records, which includes government documents and orders. *Lee v. City of Los Angeles*, 250 F.3d 668, 689–90 (9th Cir. 2001); *In re W. States Wholesale Nat'l Gas Antitrust Litig.*, 633 F. Supp. 2d 1151, 1169 (D. Nev. 2007) (taking judicial notice of Federal Energy Regulatory Commission orders). "However, when a court takes judicial notice of a matter of public record, such as another court's opinion, it may not do so for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity." *Id.* at 1168–69 (internal quotations and citations omitted).

Exhibits A, B, and D–J are filed within the United States District Courts. (ECF No. 6-3, 5–249.) Exhibit C is filed within the California Superior Court. All documents are public records and are not subject to reasonable dispute. *See Lee*, 250 F.3d at 689–90. Therefore, Defendant's request for judicial notice of Exhibits A through J is GRANTED.

B. First-to-File Rule

The crux of the instant dispute is whether Plaintiff can bring this action despite four existing and similar pending actions across different districts. (*See* ECF No. 1; *see also* ECF No. 6-1 at 6–7 (citing Navarrete Class action, *Amaraut* Class action, *Navarrete* PAGA action, and *Fuhr* Class action).) Defendant argues: (1) Plaintiff's claims should be dismissed under a first-to-file rule; and (2) the Court should stay the instant action in absence of dismissal to allow time for resolution of the other pending cases. (ECF No. 6 at 6–20.) In opposition, Plaintiff states that the first-to-file rule does not apply because: (1) *Amaraut* and *Navarrete* face conflict of interest risks; (2) *Amaraut* and *Navarrete* face class certification risks; (3) the issues in the earlier filed actions are not sufficiently similar; and (4) the parties are not the same. (ECF No. 11 at 11–17.) In reply,

Defendant argues: (1) Plaintiff's arguments about conflict of interest and class certification are speculative; and (2) Plaintiff does not demonstrate any reason why he would be prejudiced by the Court staying the case. (ECF No. 13 at 6–14.)

The first-to-file rule is a doctrine that permits the district court to decline jurisdiction over an action when a complaint involving the same parties and issues have already been filed in another district. *See Adoma v. Univ. of Phoenix, Inc.*, 711 F. Supp. 2d 1142, 1146 (E.D. Cal. 2010). The first-to-file rule is intended to "serve the purpose of promoting efficiency." *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991) (citations omitted). When applying the first-to-file rule, courts should be driven to maximize "economy, consistency, and comity." *Kohn L. Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1239–40 (9th Cir. 2015) (citations omitted). A court looks at three factors: (1) chronology of the lawsuits; (2) similarity of the parties; and (3) similarity of the issues. *Id.* The parties and issues do not have to be identical, only substantially similar. *Id.* at 1240–41. However, a court has discretion to decline applying the first-to-file rule if the balance of convenience and equity weighs in favor of the later filed action. *Alltrade, Inc.*, 946 F.2d at 628. Examples that satisfy declining the first-to-file rule include whether the first filing party did so in bad faith, as an anticipatory suit, or to forum shop. *Young v. L'Oreal USA Inc.*, 20-cv-00944-JSW, 2021 WL 3235855 at *6 (N.D. Cal. Jan. 15, 2021).

The Court will analyze each factor in turn.

i. Chronology of the Lawsuits

Plaintiff and Defendant do not dispute the chronology of the relevant lawsuits. (*Compare* ECF No. 6-1 at 8–11 (discussing the procedural history of the *Amaraut*, *Navarrete*, and *Fuhr* actions), *with* ECF No. 11 at 7–9 (same).) All actions were filed between one year and three months before the instant action. (ECF No. 6-1 at 8–11.) *Navarrete* class action is the first relevant action, filed on January 29, 2019. (*Id.* at 8–9.) *Amaraut* is the second relevant action, filed on February 28, 2019. (*Id.* at 9–10.) The *Navarrete* PAGA action is the third relevant action, filed on April 5, 2019. (*Id.* at 8.) *Fuhr* is the fourth relevant action, filed on March 12, 2020. (*Id.* at 10.) Finally, Plaintiff's instant action was filed on June 23, 2020, making it the

latest action. (*See generally* ECF No. 1.)

Accordingly, the Court finds that the first factor of the first-to-file rule weighs in favor of Defendant.

ii. Similarity of the Parties

Plaintiff and Defendant dispute whether the parties in each case are similar. (*Compare* ECF No. 6-1 at 13 ("the putative classes in *Navarrete* and *Amaraut* necessarily subsume the entirety of the California-only putative collective proposed in *Murphy*"), *with* ECF No. 11 at 16 ("parties are not the same because the earlier filed actions were not certified").) Further, they disagree on whether the Court should determine similarity based on the putative class in the instant action and the putative class in the other Class Actions, or whether the Court should determine similarity based on the named parties only. (*See* ECF No. 6-1 at 13–14; *see also* ECF No. 11 at 16–17.)

In general, parties do not have to be identical. *Kohn L. Grp., Inc.*, 787 F.3d at 1240-41. It is enough if they are substantially similar. *Id*. While the issue of class certification is not a factor of the first-to-file rule itself, it can be dispositive of whether parties for one action are substantially similar to parties of another action. *See generally Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289 (N.D. Cal. 2013). On one hand, if the Court compares Plaintiff in the instant action to the named plaintiff[s] in the other Class Actions, then there will be no similarity of the parties. *Lac Anh Le v. Pricewaterhousecoopers LLP*, Case No. C-07-5476 MMC, 2008 WL 618938, at *2 (N.D. Cal. Mar. 4, 2008) (holding there is no similarity of parties because the individual named plaintiffs are not the same). On the other hand, if the Court compares the putative class in the instant action to the putative classes in the other Class Actions, then there will be substantial similarity between the parties. *Wallerstein*, 967 F. Supp. 2d at 1289 (holding there is substantial similarity between putative classes if plaintiffs have the potential to join another class in a pending action). Thus, the Court will analyze the relevance of class certification in the actions and whether the Court should compare named plaintiffs or putative classes.

///

///

a) Relevance of Class Certification

Plaintiff argues the class certification status in all cases is relevant, and specifically, individual plaintiffs *should* be compared in cases where classes are not yet certified. (ECF No. 11 at 17 (citing *Lac Anh Le*, 2008 WL at *1).) Defendant argues certification is not relevant because Plaintiff's argument is speculative and the putative classes in *Navarrete* and *Amaraut* include Plaintiff. (*See* ECF No. 13 at 6–14; *see also* ECF No. 6-1 at 13.) The Court disagrees with the idea that class certification is not relevant.

Courts have taken two approaches when comparing classes prior to class certification. *Id.* In the first approach, if classes to which plaintiffs are eligible are not yet certified, then the court only needs to consider individual plaintiffs when deciding whether the parties are substantially similar. *Lac Anh Le*, 2008 WL at *1. This approach — as identified in *Lac Anh Le* — is the minority approach. *Wallerstein*, 967 F. Supp. 2d at 1295. In the second and more widely accepted approach, classes can be compared before certification which allows inquiry into whether the putative classes seek to represent at least some of the same individuals. *Id.* (comparing putative classes of plaintiffs before certification); *see also Adoma*, 711 F. Supp. 2d at 1147– 48 (finding putative classes substantially similar because both classes seek to represent at least some of the same individuals and plaintiffs may opt in if another case becomes certified). As such, courts have held that putative classes in class action lawsuits are substantially similar where both classes seek to represent at least some of the same individuals. *Adoma*, 711 F. Supp. 2d at 1147–48.

Given that courts within this district have applied the *Wallerstein* approach — and the Court is unaware of any court within this district applying the *Lac Anh Le* approach — this Court will apply the *Wallerstein* approach. *See Adoma*, 711 F. Supp. 2d at 1147 (applying the majority approach). Accordingly, the Court will compare putative classes when evaluating the similarity of the parties.

1. Putative Classes

Plaintiff argues that plaintiffs are not similar because the *Amaraut*, *Navarrete*, and *Fuhr*

classes are not yet certified. (ECF No. 11 at 16–17.) As discussed, certification is not necessary to compare putative classes. *Adoma*, 711 F. Supp. 2d at 1147–48. Courts look to whether the putative classes seek to represent at least some of the same individuals. *See Wallerstein*, 967 F. Supp. 2d at 1295.

Plaintiff is a non-exempt employee. (*See* ECF No. 1 at 4 (asserting Plaintiff is a non-exempt hourly sales supervisor).) When examining the putative classes in each of the actions, there are overlapping class members. (*See* ECF No. 6-1 at 8–10.) The *Amaraut* and *Navarette* classes seek to represent some of the same individuals — non-exempt employees regardless of position. (*See id.*) Meanwhile, the *Fuhr* class seeks to represent non-exempt store managers. (*Id.*) Because the *Fuhr* class is limited to non-exempt store managers (*id.* at 10), Plaintiff may not qualify to join the *Fuhr* class. However, because the *Amaraut* and *Navarrete* classes are open to all non-exempt employees (*id.* at 8–10), Plaintiff may qualify to join the *Amaraut* and *Navarrete* classes as a non-exempt sales supervisor. Even if the Court accepts Plaintiff's argument that parties are not similar because the other Class Actions are not certified, the argument is unpersuasive because the court in the *Navarrete* class action conditionally approved the class comprising of all non-exempt employees. Thus, the Court finds that the parties are similar with respect to Plaintiff and the classes in *Amaraut* and *Navarette*. *Adoma*, 711 F. Supp. 2d at 1148.

Accordingly, the Court finds that the second factor of the first-to-file rule weighs in favor of Defendant.

iii. Similarity of the Issues

The causes of action in the instant action are almost identical to the ones in *Amaraut* and *Navarrete*.[2] (ECF No. 6-1 at 17–19.) While *Fuhr* does not assert a PAGA claim, *Fuhr* asserts all

[2] *Amaraut*, *Navarrete*, and the instant action all assert the following claims: (1) Failure to Provide Meal Periods (violation of Cal. Lab. Code §§ 512, 226.7, and the applicable wage order); (2) Failure to Provide Rest Periods (violation of Cal. Lab. Code § 226.7 and the applicable wage order); (3) Failure to Pay Minimum/Regular Wages (violation of Cal. Lab. Code §§ 1194, 1194.2, 1197, 1198, and the applicable wage order); (4) Failure to Pay Overtime Wages (violation of Cal. Lab. Code § 510, 1194, 1198, and the applicable wage order); (5) Failure to Furnish Timely and Accurate Wage Statements (violation of Cal. Lab. Code § 226); (6) Failure to Pay all Wages due upon Termination (violation of Cal. Lab. Code §§ 201-203; (7) violation of California's Unfair Competition Law (Bus. & Prof. Code § 17200 *et. seq.*); and (8) violation of Private Attorneys

of the same class claims that Plaintiff asserts in this action. *See id.* Plaintiff argues the issues in *Amaraut*, *Navarrete*, and *Fuhr* actions are not substantially similar to the issues in the instant action for three reasons: (1) the duties of sales supervisors are different from lower-level employees so the factual predicate for all claims differ between the positions; (2) Murphy cannot be dismissed or stayed in deference to *Fuhr* because these cases are brought on behalf of non-overlapping, distinct classes that have different duties; and (3) *Amaraut* does not allege PAGA claims. (ECF No. 11 at 14–16.) Defendant argues the issues are substantially similar because the *Amaraut*, *Navarrete*, *Fuhr*, and instant actions center on the same dispute: "whether Sprint's non-exempt employees were afforded uninterrupted meal and/or rest breaks, and whether they were forced to perform off-the-clock work." (ECF No. 6-1 at 17.)

Whether a court applies the first-to-file rule depends on the substantial similarity of the issues. *Adoma*, 711 F. Supp. 2d at 1148. When analyzing whether issues are substantially similar, a court considers if the common facts, taken together, would lead to the same central question between the cases. *See id.*; *see also Ward v. Follett Corp.*, 158 F.R.D. 645, 648–49 (N.D. Cal. 1994) (applying the first-to-file rule in a case where there is a common central question). Even if a plaintiff presents alternative theories compared to another pending action, it does not necessarily prevent the application of the first-to-file rule because common facts may give rise to a central issue between the cases. *Adoma*, 711 F. Supp. 2d at 1149.

Plaintiff asserts the issues in the instant action are not substantially similar because there is a difference in positions and the duties do not overlap. (ECF No. 11 at 15 (asserting that Plaintiff is a non-exempt sales supervisor, Navarrete is a billing assistant, and Amaraut is a salesperson).) However, this argument is unpersuasive because even if the positions are different, the non-exempt status applies to all plaintiffs in the actions. (*See* ECF No. 13 at 10.) As discussed, the Court only needs to consider whether common facts lead to a central issue. *Adoma*, 711 F. Supp. 2d at 1149. The common facts to all plaintiffs are: (1) the plaintiffs

---

General Act ("PAGA") (Cal. Lab. Code §§ 2698 and 2699, *et. seq.*). (ECF No. 6-1 at 18–19.) *Fuhr* only differs from the other actions in that it does not assert a PAGA claim. (*Id.*) Instead, *Fuhr* asserts an action for Failure to Reimburse Incurred Necessary Business Expenses (violation of Cal. Lab. Code § 2802), of which only *Navarrete* asserts as well. (*Id.*)

allegedly worked for Defendant as non-exempt employees; (2) the plaintiffs allegedly — as non-exempt employees — were not paid meal/rest breaks in accordance with California wage and labor law; and (3) the plaintiffs allegedly were forced to work off-the-clock for little to no overtime pay. (ECF No. 1 at 4.) Here, as Defendant points out, the central questions are whether non-exempt employees had uninterrupted meal/rest breaks and if non-exempt employees were forced to work off the clock in violation of California laws. (ECF No. 6-1 at 17.) These questions do not rest on whether Plaintiff was a sales supervisor, billing assistant, or sales manager. This Court finds that the common facts across all claims would lead to the same central question across all actions. *See Ward*, 158 F.R.D. at 648-49.

Accordingly, the Court finds that the third factor of the first-to-file rule weighs in favor of Defendant. While the Court declines to dismiss the case in its entirety, the Court will now analyze Defendant's request to stay the instant action pending resolution of the Class Actions.

C. Staying the Instant Action

Defendant alternatively requests the Court to stay the instant action in the event the Court decides not to dismiss the case entirely. (ECF No. 6-1 at 20–21.) Defendant argues that granting a stay would "avoid the risk of inconsistent rulings." (ECF No. 6-1 at 21.) In opposition, Plaintiff argues that a stay is not warranted because the risk of inconsistent rulings is non-existent. (ECF No. 11 at 19 ("the *Fuhr* and *Amaraut* cases are being decided in the same district"—the Southern District of California).) Plaintiff further argues a stay is unwarranted because "none of the earlier filed actions have been resolved through a court approved settlement." (ECF No. 11 at 20.) Defendant further argues granting a stay will "promote efficiency, judicial economy, and discourage multiple sets of litigation on the same issue." (ECF No. 6-1 at 21.) The Court agrees with Defendant. *Alltrade, Inc.*, 946 F.2d at 629 (finding that once stayed, a case may be lifted after resolution of other pending cases to consolidate, transfer, or dismiss).

Once an action satisfies the factors of the first-to-file rule and a court finds its application is proper, it has the discretion to transfer, stay, or dismiss the action. *Adoma*, 711 F. Supp. 2d. at 1146. Generally, if there are uncertainties about the status of another case, whether it be jurisdictional or outcome-based, the Ninth Circuit has opted for the prudent approach of staying a

case. *Alltrade, Inc.*, 946 F.2d at 625.

Here, the three factors of the first-to-file rule are met. However, as Plaintiff points out, there are uncertainties as to whether the other courts will certify the classes in the Class Actions, or if parties in the *Navarrete* case will reach a final written settlement agreement. (*See* ECF No. 11 at 12–13, 19.) However, Plaintiff's concerns are the same concerns the Ninth Circuit has held favor a stay of action. *Alltrade, Inc.*, 946 F.2d at 629 (holding that "in cases where the first-filed action presents a likelihood of dismissal the second-suit filed should be stayed, rather than dismissed.") Inconsistency concerns are warranted only where the court does not stay a case pending resolution of another case to which Plaintiff may be a party. *Rubio v. Arndal*, Case No. 1:13-cv-0027-LJO-BAM, 2013 WL 796669 at *5 (E.D. Cal. Mar. 4, 2013) (finding that "absent a stay, there would be a significant risk of inconsistent rulings given the number of cases in the [multi-district-litigation] that potentially raise the same . . . question. . . . [T]he weight of authority suggests that granting a stay in order to avoid inconsistent rulings under these circumstances are both routine and advisable.") Additionally, the stay can be lifted at a later date once the other actions are resolved to either proceed on the merits of the issues, transfer to another district, or dismiss entirely. *Alltrade, Inc.*, 946 F.2d at 629.

Accordingly, the Court finds that a stay in the instant action is warranted and Defendant's Motion to Stay is GRANTED.

///

///

///

///

///

///

///

///

///

///

IV. CONCLUSION

For the aforementioned reasons, the Court hereby GRANTS in part and DENIES in part Defendants' Motion to Dismiss or in the alternative Motion to Stay (ECF No. 6) as follows:

1. Defendants' Motion to Dismiss is DENIED; and
2. Defendants' Motion to Stay for all claims is GRANTED on Defendant's request to stay proceedings.

Plaintiff's instant action is hereby STAYED pending the resolution of all other relevant actions to which Plaintiff is a potential class member. Accordingly, the Court directs the Clerk of the Court to administratively close this case. The parties may file a request with the Court to lift the stay and reopen the case following the resolution of all other relevant actions.

IT IS SO ORDERED.

DATE: December 8, 2021

Troy L. Nunley
United States District Judge